

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
AMENDED INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Amend Section 7.50 (b)(180)
Title 14, California Code of Regulations
Re: Smith River

- I. Date of Initial Statement of Reasons: June 30, 2004
 Amended Initial Statement of Reasons: August 18, 2004
- II. Dates and Locations of Scheduled Hearings:
- (a) Notice Hearing: Date: June 25, 2004
 Location: Crescent City
- (b) Discussion/Adoption Date: **October 22, 2004**
 Hearing Location: Concord

III. Description of Regulatory Action:

- (a) Statement of Specific Purpose of Regulation Change and Factual Basis for
 Determining that Regulation Change is Reasonably Necessary:

Current sport fishing regulations for the Smith River in the reaches of: a) the main stem from the mouth to the confluence with the Middle and South forks, b) the Middle Fork from the mouth to Patrick Creek, c) the South Fork from the mouth to Jones Creek, and the North Fork from the mouth to Stony Creek allow fishing during September 1 through March 31. The use of barbed hooks is prohibited all year.

This proposal recommends regulation changes for the Smith River estuary (downstream of the confluence with the Middle and South forks) that would extend the open season one additional month from March 31 to April 30, and allow the use of barbed hooks from September 1 through April 30. This proposal also includes eliminating the barbless hook restriction during the period from September 1 through March 31 in the other three anadromous reaches of the Smith River identified above.

In addition, this proposal includes clarifying language that explicitly identifies a short reach of the South Fork Smith River as closed to fishing all year. Current regulations indicate that the South Fork Smith River from the mouth upstream approximately 1,000 yards to George Tyron bridge, and from Craigs Creek to Jones Creek as open to fishing from the fourth Saturday in May

through March 31. The 2003 regulations indicated that the reach from George Tryon Bridge to Craigs Creek was closed to fishing in 2003. In 2004, the presentation of the Smith River regulations was modified to include a more logical sequence by drainage; the seasons, bag limits and gear restrictions were unchanged. When drafting the new 2004 regulations the closure of the South Fork Smith River between the George Tryon Bridge and Craigs Creek was omitted.

Background

Members of the public recommended regulation changes on the Smith River that included the following verbatim recommendations:

1. “Change the closure date for steelhead from March 31 to April 30 each year from the mouth to the main stem confluence of South Fork and the Middle Fork (Smith River). This would allow fishing for steelhead below the confluence and also allow fishing for cutthroat trout prior to the opening at the end of May”.
2. “Change the barbless hook regulation to allow barbed hooks from September 1 to April 30. This regulation would eliminate a hardship in enforcement and allow concentration of harsher violations. Various studies reported in the literature indicate that there is no significant difference in the mortality rate of steelhead or salmon during the use of barbed vs. barbless hooks. Oregon eliminated their barbless hook regulation after such data were presented”.

The Department and NOAA Fisheries support a steelhead management strategy that provides for the protection of listed or sensitive steelhead trout resources, while maintaining Chinook salmon and steelhead fisheries in streams north of the Russian River. Harvest of coho and wild steelhead are prohibited throughout the State, except wild steelhead may be taken in the Smith River (one per day, no more than five per year).

Department analysis of extending the fishing season through April:

Fishing is currently permitted on the Smith River from the fourth Saturday in May through March 31. The proposed regulation change suggests extending the fishing season in the main stem Smith River below the Middle and South forks from March 31 to April 30. This proposed regulation change is inconsistent with steelhead fishing seasons in most North Coast anadromous streams. The Department acknowledges that extending the season would potentially provide some additional angling opportunity for coastal cutthroat trout, but the proposal also identified a longer steelhead season. The adult steelhead fishery is primarily over by the end of March on the Smith River. Salmon and steelhead juveniles migrate to the ocean in April and May and extending the season through April increases the potential risk of incidental hooking mortality of coho and steelhead emigrants. In addition, the

regulation change is not consistent with the Department's steelhead management agreement with NOAA Fisheries, consequently the Department does not support this recommendation.

Department analysis of allowing the use of barbed hooks:

Current regulations permit only the use of barbless hooks in anadromous waters of the Northern Coast Fishing District (includes the Smith River). A change in this regulation would alter the efforts by the Department in 2002 to simplify and apply consistent hook regulations throughout the State. More importantly, the regulation change is not consistent with the Department's steelhead management agreement with NOAA Fisheries, consequently the Department does not support this recommendation.

(b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Sections 200, 202, 205, 215, 220, 315, and 316.5, Fish and Game Code.
Reference: Sections 200, 205, 206, 215, 316.5, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change: None

(d) Identification of Reports or Documents Supporting Regulation Change: None

(e) Public Discussions of Proposed Regulations Prior to Notice publication:

Public Meeting:	Date:	March 25, 2004
	Location:	Crescent City
	Date:	June 25, 2004
	Location:	Crescent City

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change: None

(b) No Change Alternative:

The Department believes the no-change alternative provides the best protection and conservation of the salmon and steelhead resources in the Smith River. And the no-change alternative is consistent with formal agreements made with NOAA Fisheries concerning steelhead management in northern California.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative

considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
The proposed regulation provides additional fishing opportunities and is likely to have a positive affect on local businesses.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: None

(h) Effect on Housing Costs: None.

Updated Informative Digest/Policy Statement Overview

Current sport fishing regulations for the Smith River in the reaches of: a) the main stem from the mouth to the confluence with the Middle and South forks, b) the Middle Fork from the mouth to Patrick Creek, c) the South Fork from the mouth to Jones Creek, and the North Fork from the mouth to Stony Creek allow fishing during September 1 through March 31. The use of barbed hooks is prohibited all year.

This proposal recommends regulation changes for the Smith River estuary (downstream of the confluence with the Middle and South forks) that would extend the open season one additional month from March 31 to April 30, and allow the use of barbed hooks from September 1 through April 30. This proposal also includes eliminating the barbless hook restriction during the period from September 1 through March 31 in the other three anadromous reaches of the Smith River identified above.

Current regulations indicate that the South Fork Smith River from the mouth upstream approximately 1,000 yards to George Tryon bridge, and from Craigs Creek to Jones Creek as open to fishing from the fourth Saturday in May through March 31.

In 2004, the presentation of the Smith River regulations was modified to include a more logical sequence by drainage (e.g., South Fork, Middle Fork, etc.); the seasons, bag limits and gear restrictions were unchanged. When drafting the new 2004 regulations the closure of the South Fork Smith River between the George Tryon Bridge and Craigs Creek was omitted. Regulations previous to 2004 indicated this reach as closed to fishing. The Department proposes to correct the inadvertent omission and identify this reach explicitly as closed to fishing.